IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA HARRISONBURG DIVISION

CLERK'S OFFICE U.S. DIST. COURT AT HARRISONBURG, VA FILED

February 10, 2025
LAURA A. AUSTIN, CLERK
BY: s/J.Vasquez

SAMUEL JOSEPH ORLANDO,

BY: s/J.Vasque

DEPUTY CLERK

Plaintiff,

Case No. 5:23-cv-012

By: Michael F. Urbanski

Senior United States District Judge

REBECCA BYRD NEAL et al.,

Defendants.

ORDER

Pending before the court is defendant Rebecca Neal's motion to dismiss "due to lack of evidence and non compliance to efforts to obtain materials to allow Defendants to adequately build a case to represent themselves successfully before the court." ECF No. 179. Rebecca Neal contends that the case against her and Bristol Neal was brought "to impune [the Neals'] character and create doubt as to the honesty of future testimony in criminal proceedings involving the Plaintiff's guardians." Id. at 1. To support the claim that the instant case is an attempt to "create doubt as to the honesty of future testimony" by Rebecca Neal, the motion cites a filing in a criminal case against Richard Moore, who is not a party in this case, stating Moore's opposition to the government's motion in limine to limit the cross examination of Rebecca Neal, who, according to the filing, was to serve as a government witness in the criminal trial. Id. at 3. The motion also requested dismissal due to the lack of discovery and the fact that several of plaintiff Orlando's attorneys had withdrawn and been replaced as Orlando's counsel. Id. at 1-2.

Pageid#: 3713

Even if these were meritorious grounds for dismissal, the motion is untimely.

Rebecca Neal previously filed a motion to dismiss on similar grounds on July 2, 2024. ECF

No. 157. That motion also cited discovery issues and claimed that in filing the case, "the

Plaintiff [was] acting on behalf of other parties to silence the Neals." Id. at 3. The court

construed that motion as a motion to dismiss under Federal Rule of Civil Procedure

12(b)(6). ECF No. 160 at 3 (stating that the court would liberally construe pro se filings and

citing Erickson v. Pardus, 551 U.S. 89, 94 (2007)). The court denied that motion to dismiss

as untimely, noting that "the opportunity to file a motion to dismiss under Rule 12(b) in the

Neal Action has long since passed, given that the Neals filed their answer to the complaint

over a year ago." Id. at 4 (citing Fed. R. Civ. P. 12(b) ("A motion asserting any of these

defenses must be made before pleading if a responsive pleading is allowed."); Defs.' Answer,

ECF Nos. 5, 6 (filed Feb. 15, 2023)). For the same reasons, the currently pending motion to

dismiss, ECF No. 179, is **DENIED**.

It is **SO ORDERED**.

Entered:

February 9, 2025

Mike Urbanski

Senior U.S. District Judge 2025.02.09 11:46:46

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Michael F. Urbanski

Senior United States District Judge

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